

# MPAs AND ENFORCEMENT

## MODULE 7

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Case Study: Florida Keys National Marine Sanctuary  
Enforcement Framework

### **Acknowledgements**

The majority of information presented in this module is drawn from the following publication:

Department of Environment and Natural Resources, Bureau of Fisheries and Aquatic Resources of the Department of Agriculture, and Department of the Interior and Local Government. 2001. *Philippine Coastal Management Guidebook No. 8 Coastal Law Enforcement*. Coastal Resource Management Project of the Department of Environment and Natural Resources, Cebu City, Philippines. 164p. [www.oneocean.org](http://www.oneocean.org) (PH-8, 2001)

With additional information from:

Oposa, A.A. 1996. Legal marketing of environmental law. *Duke Journal of Comparative and International Law* 6: 273-291.

## **OVERVIEW**

*A well structured marine and coastal law enforcement plan is an important component of an effectively managed MPA. Enforcement should not only detect and prosecute violators, but also encourage voluntary compliance with laws and regulations.*

Coastal and marine law enforcement should incorporate a variety of techniques to achieve compliance with MPA rules and regulations. There are a variety of uses of the coastal zone and an equally varied range of violations of coastal laws. There are also a wide range of approaches to deter these violations and to encourage behavior consistent with the law. Law enforcement approaches should be structured to include both interpretive and traditional law enforcement, and law enforcement strategies will vary depending on their goals and the cultural context in which they operate.

## **IMPORTANCE OF ENFORCEMENT TO EFFECTIVE MPA MANAGEMENT**

Enforcement efforts for MPA management essentially have the same purpose as enforcement in other contexts: to deter illegal behavior by apprehension and prosecution of lawbreakers through traditional law enforcement, and to encourage widespread and voluntary compliance with coastal and marine laws. Enforcement programs for MPAs require strategies to deter illegal activities within and around the MPA as well as approaches to encourage observation of the rules for which activities are allowed in the MPA. Enforcement in and around MPAs should work within the wider system of coastal and marine law enforcement.

## **LEARNING OBJECTIVES**

- ✓ To understand the role of enforcement as a tool to manage human use activities that impact the marine environment
- ✓ To identify alternative short-term and long-term methods for addressing human behavior that is not compatible with resource protection that encourage compliance with coastal laws and deter violations
- ✓ To understand the importance of the cultural context to appropriate and effective management

## **LINKS TO OTHER EFFECTIVE MANAGEMENT AREAS**

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### ***Community-based Participatory Processes***

Community involvement in the planning and implementation of a coastal law enforcement program ensures that community members know the reasons for enforcement, and there can be better ‘buy-in’ of the enforcement program. Community members may also be part of coastal law enforcement teams.

### ***Awareness Building***

Understanding reasons for coastal laws as well as the effects on coastal and marine resources when those laws are violated can promote better compliance with laws.

### ***Zonal Management***

Enforcement personnel must be aware of what uses and activities are allowed in different marine and coastal zones. Enforcement strategies may differ depending on what activities are allowed in a zone.

### ***Alternative Livelihoods and Poverty Reduction***

Community members may be employed as enforcement personnel, such that the enforcement program creates alternative livelihoods. In addition, sustainable tourism to the area (which itself creates alternative livelihoods) can generate income for enforcement programs.

### ***Marine Conservation***

Enforcement of and compliance with coastal laws is necessary to protect and sustain coastal resources.

## **INDICATORS OF EFFECTIVE COASTAL LAW ENFORCEMENT**

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A reduction of coastal law violations over time means that there is increased compliance with coastal laws and regulations, which in the long-term can ultimately lead to an improvement in the state of coastal resources. More specific indicators of effective coastal law enforcement as they relate to a MPA include increased compliance with the rules and boundaries of the MPA, a high level of awareness among the community of the importance of enforcement of and compliance with coastal laws, and good communication between MPA managers and coastal law enforcement teams.

## LESSON PLAN – Classroom

### ***Discussion— Review and Discuss***

Briefly review the previous day's activity and ask any outstanding questions. Then discuss the following questions within your group:

Existing enforcement efforts for each MPA:

- *How many regulations do you have?*
- *How is the public/ surrounding community informed of regulations?*
- *Do you have a formal enforcement plan?*
- *How many enforcement officers, boats?*

## **7.1 PURPOSE AND NEED FOR ENFORCEMENT**

### **Guiding Principles and Framework**

MPA law enforcement is not only about people in uniforms apprehending and arresting people. Instead it involves a broad range of approaches by various institutions as well as citizens in the coastal communities. **Enforcement** means to compel observance of or obedience to rules.

Four fundamental principles of law enforcement, modified from Oposa (1996) can be thought of as follows (PH – 8):

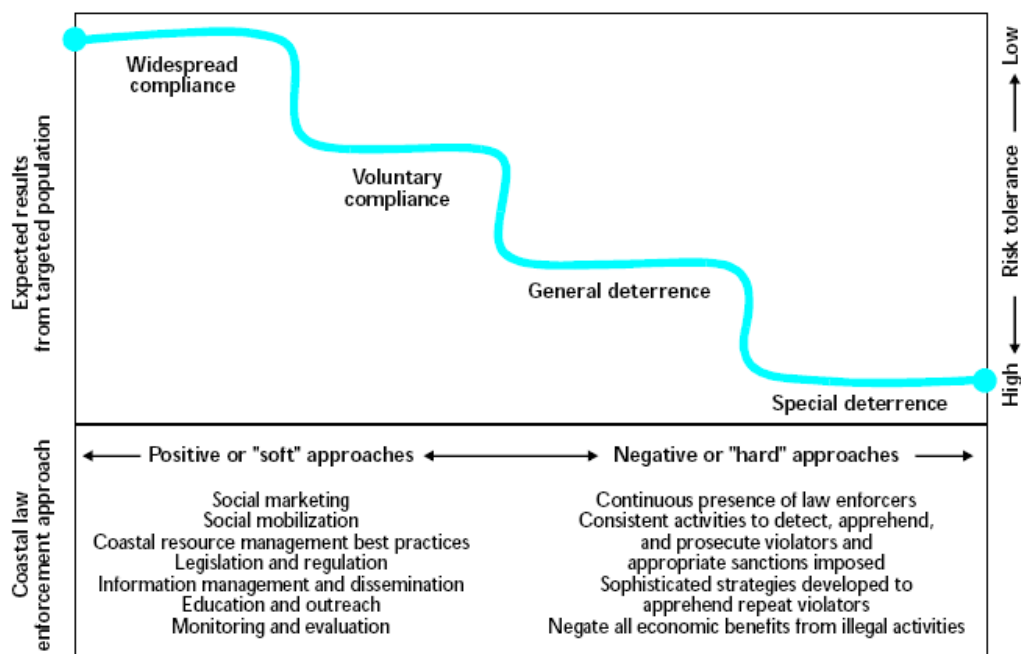
1. Law is an agreement of minds on a structure or set of rules to create a **social product** that must be thought of as desirable and supported by individuals and society as a whole. Laws generally aim to promote a 'common good.' Laws can be better implemented and more effective when individuals and society as a whole fully understand and appreciate the reasons for laws.
2. Legal marketing and education about coastal laws – 'selling the law' – is necessary to promote **compliance**, or following the law. People need to be made aware of why a law exists and the consequences of their actions as well as the corresponding administrative, legal and judicial sanctions that would result when laws are violated.
3. Appropriate punishment must be carried out in order to serve as a deterrent to illegal behavior. Prosecution of proven violators to the fullest extent of the law is important. The process of judicial prosecution serves as a tool for behavioral change.

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4. Sociocultural sensitivities must be considered in the manner used for implementing the law. Specific cultural attributes, such as the sometimes highly personal nature of relationships between enforcers and violators, or traits such as loss of face values, must be understood and incorporated into the design of enforcement approaches.

The concept of **legitimacy** is an important one for any enforcement program. Laws and regulations as well as the enforcement approaches employed need to be reasonable, carry authority, and follow accepted standards and practices. Enforcement that is thought of by the general population to be legitimate will be more effective in encouraging compliance with laws and regulations.

Effective coastal law enforcement relies on a framework that incorporates both prosecution of violations with law as well as awareness building of why the laws are in place and the benefits achieved from following, or complying with them. These approaches exist in a continuum as shown in the following figure (PH-8, 2001):



## **Obstacles to Overcome in Implementing Coastal and Marine Laws**

When developing an enforcement plan many jurisdictional and practical issues need to be considered, and to the extent possible, addressed before implementation of the plan. Some of these considerations include:

- Conflicting policies, laws and implementation programs
- Lack of political will to implement laws and enforcement programs
- Incentive system that promotes illegal activities
- Lack of patrol boats and other basic equipment to conduct monitoring and patrols
- Lack of trained coastal law enforcement units
- Lack of clear “lead” agency in coastal law enforcement
- Slow justice system with judiciary and prosecutors unfamiliar with fisheries and other laws
- Lack of public awareness of laws and consequences of illegal activities
- Slow economic development in coastal areas and lack of livelihood alternatives for those dependent on coastal resources

### ***Discussion — Obstacles to Successfully Implementing an Enforcement Plan***

- *Are any of these issues present in the context of your MPA?*
- *Are there one or more issues that are most pressing for your MPA?*

## **Human Impacts That May Require Enforcement**

### ***Exercise 7.1 — Human Use Activities in the Coastal Zone***

List Some Human Use Activities of the coastal zone that may require enforcement action.

- *Which human use activities are relevant and may occur near or in MPAs that require enforcement action?*
- *Are there human use activities in the coastal/ marine environment that do not require some form of enforcement?*

*Handout 7.1: Activities that Relate to Coastal Law Enforcement*

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Human uses of coastal and marine areas are numerous and varied, and so are the laws that govern those uses. Laws apply to **acts** carried out by **persons** using coastal/marine **resources** or **properties**.

A general list of coastal law violations that affect MPAs follows. *Depending on the illegal activity, multiple violations can occur at once!*

### **Fisheries-related;**

- Fishing in restricted/regulated areas;
- Fishing by use of explosives;
- Fishing by use of noxious or poisonous substances;
- Fishing by use of electricity;
- Marketing and buying illegally caught fish;
- Fishing with prohibited gear; and
- Fishing without the necessary licenses, permits, and other documentary requirements;

### **Protected aquatic species-related**

- Capture, import or export of threatened and endangered species
- Capture of prohibited species

### **Coastal habitat-related**

- Destruction of forestry habitat
- Destruction of marine habitat including sea grass beds, mangroves and coral reefs

### **Foreshore and shoreline development-related**

- Unauthorized use of or operations on the foreshore and shoreline

### **Coastal and marine pollution-related**

- Land-based pollution
- Sea-based pollution

### **Zonal and navigation-related**

- Non-observance of the rules of the nautical 'road'
- Passage through and anchorage in non-navigational areas
- Improper use of sea lanes, wharfs, harbor

### **Other violations/ crimes**

- Corrupt practices of public officials
- Illegal sale and distribution of ammonium nitrate
- Illegal transport and sale of explosives and explosive devices (i.e. blasting caps)
- Illegal possession and transport of firearms
- Obstruction of justice

## 7.2 INTERPRETIVE ENFORCEMENT

### What is Interpretive Enforcement?

Interpretive enforcement is also sometimes called 'soft' or positive enforcement. The term refers to approaches geared towards encouraging widespread voluntary compliance with laws, rules and regulations. ***Interpretive enforcement is based on the premise that most people, once informed about MPA regulations, want to do the right thing.***

The more traditionally thought of enforcement is often called 'hard' or negative enforcement and focuses on deterring illegal behavior. This is where uniformed officers enter the enforcement picture. Operational tactics and planning considerations for traditional law enforcement will be covered in more detail in following sections.

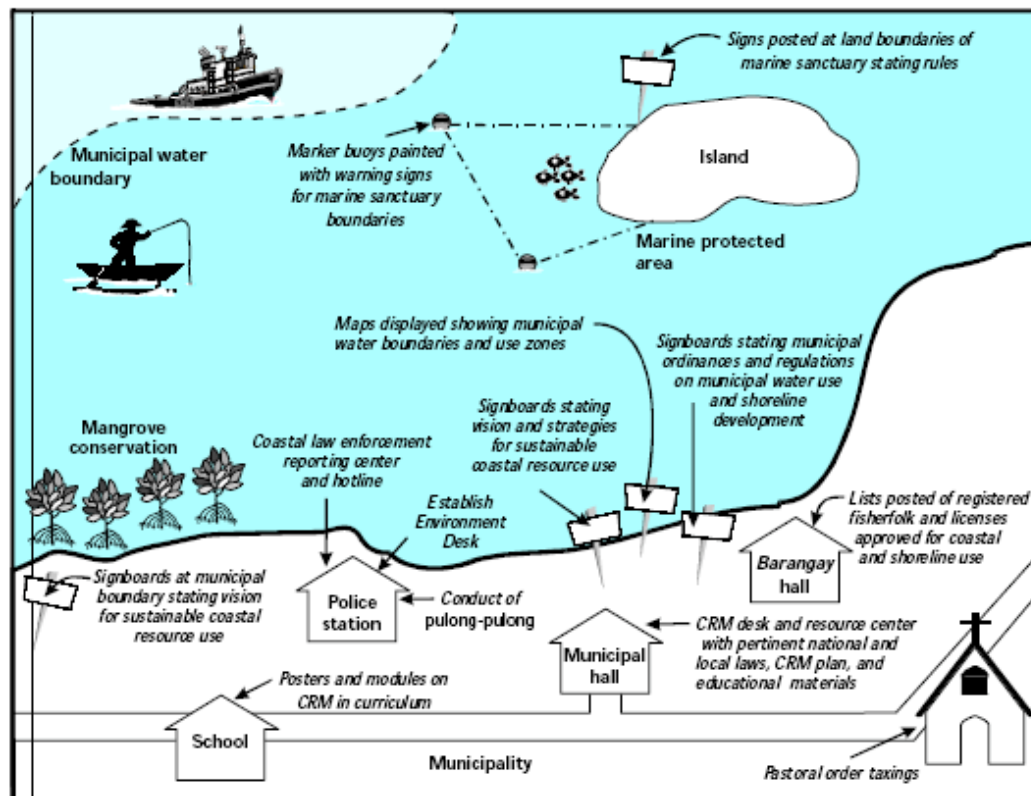
### Strategies for Interpretive Enforcement

Some strategies for soft or interpretive enforcement that are useful to consider in MPA planning and management are listed below:

**Effective education and outreach** - comes from informed decision-makers and community members working together. This can be done by a variety of national and local strategies. On a national scale, special training sessions, conferences, seminars and conventions can be held relating to coastal resource management and the need for coastal and law enforcement. Special events, media advocacy, and celebrity endorsements may be arranged. Institutionalizing environmental education programs at both national and local levels complements coastal law enforcement. At the local level, communities may put up signboards and posters in public locations, use local media, involve religious communities and fellowships, conduct periodic dialogues, trainings and seminars for key stakeholders and community organizations to network, and even initiate community theatre to stage productions of the importance of coastal resources. Enforcement officers, trained naturalists, guides, and community volunteers should all be trained in interpretive enforcement, and provided with ample materials to distribute to both the public and user groups.

**Networking and alliance-building** – improving communication between groups and stakeholders involved in coastal law enforcement helps to reach mutual agreement and furthers the common good.

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**Social marketing strategies relevant to promoting compliance with coastal laws (after PH-8, 2001)**

### ***Discussion—Using Interpretive Enforcement to Address Common Coastal Violations (listed in the previous section)***

- *How can education and outreach reduce fisheries-related violations? Protected aquatic species-related violations? Etc.*
- *Do you use interpretive enforcement in your MPA? How?*

### **Enforcement and Cultural Values**

Consideration of cultural values is an important element of any enforcement strategy, and especially so for interpretive enforcement. Community education and outreach programs for sustainable coastal resource management in general and the importance of coastal law enforcement in particular need to take into account indigenous learning and cultural values systems.

**Indigenous learning systems** are the traditional and often longstanding ways in which a local community gathers and relays information. These systems vary from newspapers, other printed

material and television media in more urban settings to gatherings called by community or local religious leaders and teachings by elders in more rural settings. Coastal communities are often rural and so rely on information from sources that are much different than information sources in urban areas.

A **cultural value system** “refers to the set of norms or conduct, traditional knowledge, and beliefs that prevail in communities. A cultural value system is the natural mechanism by which order is maintained in communities because it has its own set of informal rewards and punishments (Panopio et al 1992 cited in PH-8, 2001).”

Examples of indigenous and cultural value systems regarding natural resources include the Hawaiian culture of sustainable fishing, or the Australian Aboriginals long history of sustainable living. Indigenous learning and cultural value systems are particularly relevant to coastal law enforcement because they may often come into conflict with national and local laws, ordinances and management plans. This is especially likely if the education and outreach programs that could support the laws are weak or nonexistent. In fact, some communities may not view their collective actions or individual members’ actions as violating any coastal laws if those actions are in line with the cultural value system in place. In other situations people may comply with laws only in the presence of law enforcers. There may even be strongly held values within cultures that have bi-polar character, which in relation to laws, means those values might be used to either justify upholding or violating the law (see handout). Taking into account indigenous learning and cultural value systems when planning and designing enforcement programs can be useful to:

- convey information about the desired ‘social product’ as the reason for existing or new coastal laws; and
- promote voluntary compliance and positive behavioral change over time.

*Handout 7.2: Bi-Polarity in Cultural Values Systems - Philippines*

### **Exercise 7.2— Using Interpretive Enforcement**

Exercise 1 – as a group, list sociocultural sensitivities, perhaps specific to your MPA, that must be understood and could be incorporated into enforcement plan

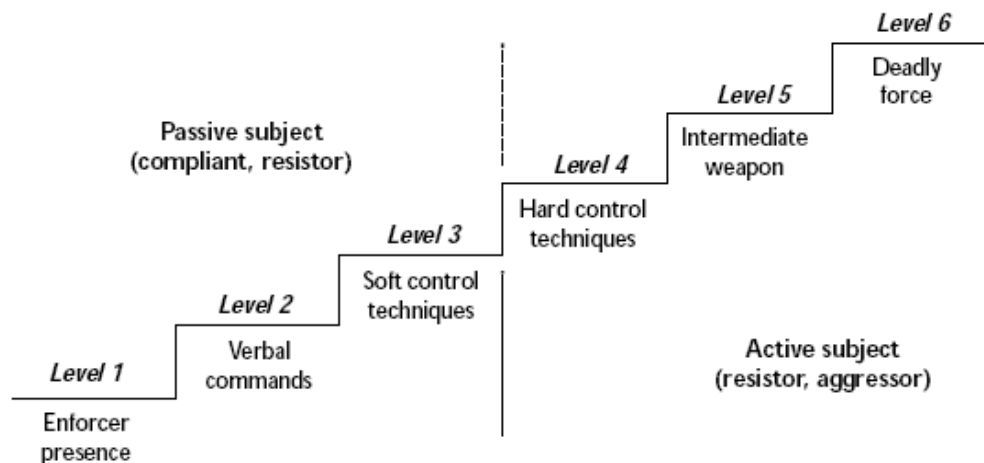
Exercise 2 – considering the recently listed cultural values, in small groups identify who might implement an interpretive enforcement, possible audience(s), and the elements of that interpretive enforcement program

### 7.3 TRADITIONAL LAW ENFORCEMENT

Traditional law enforcement approaches, such as patrolling, surveillance and apprehension, are needed to deter violation of coastal laws by the portion of the population that does not or will not respond to interpretive enforcement. Another big difference from interpretive enforcement: traditional law enforcement may involve the use of force. Force should not be used if coastal law enforcement can be effective without it (which is why interpretive enforcement is so important).

#### Use of the Force Continuum Model

The use of force in coastal law enforcement should follow internationally established rules of engagement. The **use of force continuum model** defines what level of force should be used for a given level of resistance by a violator:



- Level 1 – Sometimes just the *presence* of an enforcer is enough to deter violation or further lawbreaking.
- Level 2 – A law enforcer identifies him/herself with *verbal commands*. If the violator does not obey, the enforcer may move to the next level.
- Level 3 – *Soft or 'empty hand' (no weapon in enforcer hands) techniques* may be used to restrain a suspect who ignored or disobeyed verbal commands.
- Level 4 – *Hard empty hand techniques* can be used to counter a physical attack by the suspect.
- Level 5 – *Intermediate weapon control* is for a situation when a suspect (whether he/she has a weapon or not) is resisting enforcement so much that the enforcer is in danger of being injured. The enforcer should use a weapon such as a baton or boat oar before resorting to firearms.
- Level 6 – *Deadly force* may only be used where the enforcer or someone else on the scene is

in immediate danger of being killed. This situation is not common in coastal law enforcement.

When designing and executing traditional law enforcement, standardized procedure, proper training of law enforcement personnel, and intelligence and networking are important so violators can be properly apprehended and correct legal sanctions can be imposed. For these reasons it is useful to develop **standardized operational tactics** for law enforcement patrols.

## **Operational Tactics**

### ***Discussion—Enforcement Procedures***

*Brief group discussion on why might standardized enforcement procedures be so important? Why would it be important to gradually phase-in a law enforcement program, and how does this relate to interpretive enforcement?*

Operational tactics involve both land-based and seaborne patrols.

**Land-based activities** are preventative in nature, and may often be more effective than seaborne patrols. They are often less costly. Examples of land-based operations include the presence of law enforcers at harbors and ports, or enforcers conducting foot patrols along the shoreline. Surprise inspection of fishing boats and gears can be a good strategy to prevent violations. Another example of land-based tactics includes addressing the sources and suppliers of explosives, blasting caps, cyanide and other noxious substances.

**Seaborne patrols** can be preventative and corrective especially when they are able to carry out searches, arrests, and seizure. The most important tools used in seaborne operations are:

- boarding protocols and inspection techniques;
- rules on search, arrest, and seizure;
- rules of engagement; and
- evidence handling.

Seaborne patrols are expensive, complicated, and always involve risk. They should be conducted and led by well-trained law enforcers.

### ***Discussion – Operation Tactics***

In small groups look at the following list, pick which types of operational tactics work best in different situations.

- *Which would work well to enforce rules against destructive fishing methods? Against illegally caught species?*
- *Which tactics are best for people caught inside a fully protected MPA or a strict conservation zone of a MPA?*
- *What are some other examples of violations that could be addressed by the following*

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*operational tactics?*

A list of varied operational tactics follows.

<b>Tactic</b>	<b>Description</b>
<b>Visibility patrol</b>	Visual and obvious presence of law enforcers in area, e.g. patrolling of municipal waters using marked sea vessels and presence of uniformed law enforcers in an area.
<b>Covert patrol</b>	Secretive presence of law enforcers in the area normally conducted by plainclothes operatives using unmarked land vehicles or sea vessels. Also known as undercover operations, e.g. used to monitor possible illegal activities and gather information usually conducted secretly by law enforcement operatives.
<b>Deceptive tactics</b>	Planned operations that attempt to mislead the targets of enforcement, e.g. is deliberate leaking of wrong information about the operations.
<b>Single unit law enforcement patrol</b>	Operations conducted by a single unit of a law enforcement agency.
<b>Multi-unit law enforcement patrol</b>	Operations jointly conducted by multiple units of law enforcement agencies in a particular area.
<b>Barrier patrol</b>	Conduct of operation in land borders or municipal water boundaries, also known as border patrol operations.
<b>Blockade</b>	Deliberate attempt to restrict or regulate passage of land (checkpoints, road blockade) and sea (coastal/harbor blockade, chokepoints) transportation.
<b>Harbor patrol</b>	Operations conducted in harbors, wharfs, or ports.
<b>Harbor watch</b>	Monitoring of markings and movements of sea vessels passing through the harbor with the objective of detecting violations perpetuated by vessels or persons.
<b>Foot patrol</b>	A continuous and regularly scheduled presence of law enforcers in a particular path in the shoreline, normally conducted in strategic areas of the shoreline.
<b>Market denial</b>	Detection and confiscation of illegally caught fish or protected species at the marketplace or while en route to the market via blockade or checkpoint. Market denial negates the economic benefit derived from illegal fishing.
<b>Directed raids</b>	Planned operation involving a surprise attack or invasion of a property suspected to be involved in illegal activity. It may only be conducted by uniformed personnel authorized by a warrant or as provided for in the rules of court.
<b>Random patrol</b>	An unscheduled, unplanned patrol operation normally conducted by a single enforcement unit in a predesignated area.
<b>Joint operations</b>	A systematized or institutionalized cooperative effort between various law enforcement agencies bound by a formal agreement.

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Recommended uniform requirements and equipment for boarding a vessel:

<b><i>Mandatory</i></b>	<b><i>Optional</i></b>
Dependable patrol boat	Evidence bag/container and tags
Life jacket	Tape measure/ steel tape
Flash light/emergency light	Two-way radio
Sailing and harbor chart	Protective gloves
Parallel ruler	
Dividers	Sounding tape
Compass	Handcuffs and key
Still camera	Compact tape recorder
Handheld GPS	Compact video recorder
Pen/markers and paper	
Necessary forms	
Boarding checklist	
Binoculars	
Knives/service pistol (for uniformed enforcers)	

*Handout 7.3: Boarding Procedures for Seaborne Patrols*

*Handout 7.4: Boarding Observations and Information Obtained Through Seaborne Patrols*

### **CASE STUDY– Florida Keys National Marine Sanctuary Enforcement Framework**

#### **Exercise 7.3— Enforcement Quiz!**

In small groups, list:

- 1) three different examples of potential law violations in MPAs
- 2) an example of interpretive enforcement for MPAs
- 3) elements of a signboard for your MPA
- 4) an example of a cultural value that would be important when designing an enforcement program for the MPA
- 5) five pieces of mandatory equipment when boarding a vessel

Compare your answers with other groups and discuss.